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DEPARTMENT OF EDUCATION

34 CFR Subtitle B, Chapter II

[DOCKET ID ED-2011-OS-0010]

RIN 1894-AA03

State Fiscal Stabilization Fund Program

AGENCY: Department of Education.

ACTION: Notice of final requirement.

SUMMARY: The Secretary of Education (Secretary) is adopting as a final requirement, without change, the interim final requirement for the State Fiscal Stabilization Fund (SFSF) program that extended to January 31, 2012, the deadline by which States must collect and publicly report data and other information on various SFSF indicators and descriptors.

DATES: This final requirement is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: James Butler, State Fiscal Stabilization Fund Program, U.S. Department of Education, 400 Maryland Ave., SW., room 7E214, Washington, DC 20202-0008. Telephone: (202) 260-9737 or by email: State.Fiscal.Fund@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Background:

On September 23, 2011, the Secretary published in the Federal Register (76 FR 59036) an interim final requirement extending, to January 31, 2012, the deadline for collecting and publicly reporting data and other information on various SFSF indicators and descriptors. The interim final requirement became effective on the date of its publication in the Federal Register. At the time the interim final requirement was published, the Secretary requested public comment on whether an extension of the SFSF deadline to January 31, 2012, was warranted.

As explained in the Summary section of the interim final requirement, the Secretary extended the deadline in response to the many challenges and competing priorities that States were facing in meeting the SFSF data collection and reporting requirements by the original September 30, 2011, deadline.

There are no differences between the interim final requirement and this final requirement.

Public Comment

In response to our request for public comments on the interim final requirement, two parties submitted comments. Specifically, two States commented on the efficacy of collecting student enrollment data to meet the requirements of SFSF Indicator (c)(11) and the Department's failure, in those States' view, to indicate that a specific third-party postsecondary data-matching company could be used to meet those requirements. These comments do not relate to the deadline extension established in the interim final requirement nor do they address the further extensions proposed in a separate SFSF notice that was published in the Federal Register on the same day as the interim final requirement (i.e., the notice of proposed revisions to certain data collection and reporting requirements, and proposed priority (76 FR 59074) (notice of proposed revisions)). Because these comments are outside the scope of the interim final requirement and notice of proposed revisions, we do not discuss them further in this preamble.

Final Requirement

Each State must collect and publicly report data and other information on the SFSF indicators and descriptors by January 31, 2012.

Waiver of Delayed Effective Date

The Administrative Procedure Act (5 U.S.C. 553) requires that a substantive rule be published at least 30 days before its effective date, unless the rule grants or recognizes an exemption or relieves a restriction. (5 U.S.C. 553(d)(1)). Because we are granting States an extension of the September 30, 2011, deadline, the 30-day delayed effective date is not required. Accordingly, this final requirement is effective on the day it is published.

Executive Orders 12866 and 13563:

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is significant and, therefore, subject to the requirements of the Executive order and review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an economically significant rule); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially

alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

It has been determined that this regulatory action is significant under section 3(f)(4) of the Executive order.

We have also reviewed these regulations under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net

benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing these regulations only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that

these regulations are consistent with the principles in Executive Order 13563.

Summary of Costs and Benefits:

In accordance with both Executive orders, we have assessed the potential costs and benefits of the regulatory action to extend the current deadline by which a State must meet the requirements of the SFSF indicators and descriptors and have determined that the final requirement will not impose additional costs to grantees or the Federal government. Additionally, the Department has determined that this requirement does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Benefits

The extension of the deadline by which States have to collect and publicly report data and other information on various SFSF indicators and descriptors helps States to balance competing priorities without any additional cost to the grantees or Federal government.

Paperwork Reduction Act of 1995:

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment

on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions; respondents can provide the requested data in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency cannot conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the SFSF Phase 2 application, the Department established indicators and descriptors that required States to collect and publicly report data and other information. The Office of Management and Budget approved that information collection under an emergency review (OMB Control Number 1810-0695). The Department's authority

under that information collection expired and the Department attained approval from OMB to reinstate the collection under the same control number, OMB Control Number 1810-0695. As stated in this preamble, we are extending the deadline from September 30, 2011, to January 31, 2012, for collecting and publicly reporting data and other information on various SFSF indicators and descriptors. Please note that the paperwork burden under OMB Control Number 1810-0695 is not due to, or changed by, the extension of the deadline date. For a full discussion of the paperwork burden under this control number, please see the Paperwork Reduction Act of 1995 section in the interim final requirement published in the Federal Register on September 23, 2011 (76 FR 59036, 59038).

Regulatory Flexibility Act Certification:

The Secretary certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities. Small entities will not incur any additional costs due to the extension of the deadline by which States have to collect and publicly report data and other information on various SFSF indicators and descriptors.

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braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

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Program Authority: American Recovery and Reinvestment Act of 2009, Division A, Title XIV - State Fiscal Stabilization Fund, Public L. No. 111-5; 20 U.S.C. 1221e-3 and 3474.

Catalog of Federal Domestic Assistance (CFDA) Numbers:
84.394 (Education Stabilization Fund) and 84.397
(Government Services Fund).

Dated: January 26, 2012

Arne Duncan,
Secretary of Education.

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